

KbiWmors

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

6 16 Cr. 371 (RA)

7 MICHELLE MORTON,

8 Defendant.

9 Sentence (by telephone)
10 -----x

11 New York, N.Y.
12 November 18, 2020
13 11:00 a.m.

14 Before:

15 HON. RONNIE ABRAMS,

16 District Judge

17 APPEARANCES

18 AUDREY STRAUSS

19 Acting United States Attorney for
20 the Southern District of New York

21 BY: REBECCA G. MERMELSTEIN

22 Assistant United States Attorney

23 CAHILL GORDON & REINDEL LLP

24 Attorneys for Defendant

25 BY: NOLA B. HELLER

 SAMANTHA LAWSON

KbiWmors

1 (Case called)

2 THE COURT: Good morning, everyone. This is Judge
3 Abrams.4 MS. MERMELSTEIN: Good morning, your Honor. Rebecca
5 Mermelstein, for the government. I'm joined by Negar Tekeei
6 and Elizabeth Hanft, who dialed in on the phone.

7 THE COURT: Good morning.

8 MS. HELLER: Good morning, your Honor. Nola Heller,
9 for Ms. Morton, and I'm joined by Samantha Lawson, who's on
10 video.

11 THE COURT: All right. Good morning.

12 And good morning to you, Ms. Morton.

13 THE DEFENDANT: Good morning.

14 THE COURT: First, I want to remind everyone that this
15 is a public proceeding. Members of the public and the press
16 are able to access the proceeding through the public call-in
17 number, but any listeners or participants are reminded that any
18 recording or rebroadcasting any portion of this proceeding is
19 prohibited.20 We're here for Ms. Morton's sentencing. We are, of
21 course, in the middle of the COVID-19 pandemic. I'm thus
22 conducting this proceeding remotely pursuant to the authority
23 provided by Section 15002 of the CARES Act and the standing
24 orders issued by our chief judge pursuant to that act. I'm
25 proceeding by videoconference, although I am within the

KbiWmors

1 district, and counsel and Ms. Morton are also proceeding by way
2 of videoconference.

3 Ms. Morton, I just want to confirm that you can see me
4 and that you can hear me.

5 THE DEFENDANT: I can see you and I can hear you, your
6 Honor.

7 THE COURT: Thank you.

8 If at any point you would like to speak privately with
9 your attorneys, you should know that you're free to do so.
10 We'll take a break, you'll speak privately and then we'll
11 resume the proceedings. Do you understand?

12 THE DEFENDANT: Yes, I do. Thank you.

13 THE COURT: Thank you.

14 Ms. Heller, could you please describe the process by
15 which you discussed with Ms. Morton her right to be present and
16 a knowing and voluntary waiver of that right.

17 MS. HELLER: Your Honor, we discussed, of course, the
18 right of every defendant to be present at their sentencing
19 proceeding. We also discussed your Honor's opinion in which
20 your Honor stated that the sentencing would proceed on November
21 18, and we discussed the COVID pandemic and the implications
22 for appearing that day in person. And given all those factors,
23 Ms. Morton and I decided that it was best to appear by video
24 for this proceeding.

25 THE COURT: All right.

KbiWmors

1 Is that an accurate description of what occurred,
2 Ms. Morton?

3 THE DEFENDANT: Yes, it is, your Honor.
4 THE COURT: All right. And do you understand that you
5 have a right to have this sentencing in person in court? Do
6 you understand that?

7 THE DEFENDANT: I do. I do understand that, your
8 Honor.

9 THE COURT: And are you choosing to give up that right
10 and to proceed with the sentencing by way of videoconference
11 today?

12 THE DEFENDANT: Yes, I am giving up that right in
13 light of the COVID pandemic.

14 THE COURT: All right. Thank you.

15 Is there anything else the government thinks I need to
16 do before I make a finding as to waiver of physical presence?

17 MS. MERMELSTEIN: Your Honor, I think it's fair that
18 Ms. Morton has knowingly waived her right, but I think under
19 the CARES Act and the necessary finding that the sentencing
20 cannot be further delayed without serious harm to the interest
21 of justice it's worth noting for the record that in this
22 particular case I think the interest of justice would be harmed
23 by further delay both because the unusual length of proceedings
24 here -- this case has been now pending for about four years --
25 and the large restitution order that is anticipated going to be

KbiWmors

1 entered into -- victims, we just think there's a basis now to
2 go forward.

3 THE COURT: I intended to mention that. You've done
4 it for me, but I agree.

5 First, I'll note that I find that a knowing and
6 voluntary waiver of the right to be physically present for this
7 sentencing has been made, and I also find that today's
8 proceeding cannot be further delayed without serious harm to
9 the interest of justice. This sentencing has already been put
10 off for over two years, and for the other reasons, including
11 restitution that Ms. Mermelstein noted, I believe it's critical
12 to move forward with the sentencing today.

13 Is there anyone, Ms. Heller, who's on the line -- any
14 family members or friends -- that I would know were in court if
15 we were physically in court that are on the line that I should
16 know are listening in?

17 MS. HELLER: No, your Honor. Just other members of
18 the Cahill team of attorneys who worked on the matter.

19 THE COURT: All right. Thank you.

20 By way of background, Ms. Morton pled guilty in May of
21 2018 to Counts One and Four of the indictment. She's since
22 twice moved to withdraw her plea. Those motions were denied,
23 and we're proceeding with sentencing today.

24 Before we proceed further, I also want to note that on
25 October 30, I issued an order pursuant to Federal Rule of

KbiWmors

1 Criminal Procedure 5(f) to confirm the government's disclosure
2 obligations under *Brady v. Maryland* and its progeny and to
3 summarize the possible consequences of violating those
4 proceedings.

5 Ms. Mermelstein, I'm just going to ask you, has the
6 government complied with and will it continue to comply with
7 its disclosure obligations?

8 MS. MERTELSTEIN: Yes, your Honor.

9 THE COURT: Why don't we proceed now to the substance
10 of the proceeding.

11 In connection with today's proceeding, I have reviewed
12 the following submissions:

13 The presentence investigation report, which was
14 revised as of November 20, 2018;

15 Ms. Morton's sentencing memorandum, dated November 16,
16 2018;

17 Supplemental sentencing submissions -- actually, two
18 supplemental sentencing submissions, dated November 3, 2020,
19 and then an additional submission on November 9, 2020; and the
20 government's sentencing memorandum, dated November 23, 2018,
21 and supplemental submission, dated November 9, 2020.

22 Have the parties received each of these submissions,
23 and am I missing anything?

24 MS. MERTELSTEIN: We have received them, your Honor,
25 and you're not missing anything.

KbiWmors

1 MS. HELLER: Your Honor, we have as well. The only
2 other submission I would note would be our separate letter,
3 dated November 3, which is relevant to a few additional
4 corrections and objections to the PSR.

5 THE COURT: Right. When I noted that you had two
6 supplemental submissions dated November 3, one of them included
7 the letter that addressed your objections to the PSR. So there
8 are two letters from November 3, but not a third. Is that
9 correct?

10 MS. HELLER: That's correct. The third -- the third
11 submission was November 9.

12 THE COURT: November 9. OK. So we're all on the same
13 page. Thank you.

14 Why don't we begin by discussing the presentence
15 report that was prepared by the probation department.

16 Ms. Heller, we'll get to your objections in a moment,
17 but first let me ask you, have you reviewed the presentence
18 report and discussed it with Ms. Morton?

19 MS. HELLER: Yes, we have in detail, your Honor.

20 THE COURT: Ms. Morton, have you reviewed the
21 presentence report and discussed it with your attorneys?

22 THE DEFENDANT: Yes, I have, your Honor.

23 THE COURT: All right.

24 Ms. Heller, I know you have various objections and
25 there were some objections made by the prior attorneys as well.

KbiWmors

1 Why don't we go through which ones you want to pursue further,
2 and then we'll hear the government out on those objections.

3 MS. HELLER: Sure.

4 Your Honor, in our letter of November 3, everything on
5 pages 1, 2 and 3 -- they're listed in bullets -- are all really
6 minor. I would call them corrections. They're not objections.
7 They're factual. You know, we didn't -- the government didn't
8 take a position on those, but I don't think we need to spend
9 time in this proceeding going through them one by one unless
10 the government wants to.

11 We did a split through paragraph by paragraph and
12 corrected some things that either needed to be updated or we
13 believed were factually incorrect.

14 THE COURT: Let me just stop you there.

15 MS. HELLER: That's the bulk of them.

16 THE COURT: I think if there are items, if there's
17 language that we're adding to the presentence report, I want to
18 hear the government out.

19 Ms. Mermelstein, why don't you tell me -- you have the
20 November 3 letter -- do you have objections to the language
21 being added in paragraph 9?

22 MS. MERMELSTEIN: Your Honor, I'm just going to pull
23 up the letter.

24 We don't generally have any objections to the, as Nola
25 characterizes them, sort of minor updates and corrections --

KbiWmors

1 that is to say, information about Ms. Morton's personal and
2 familial relationships, her financial situation, updates with
3 respect to the fact that since the time this was prepared
4 additional defendants have been sentenced.

5 And I think with respect to the last paragraph about
6 Ms. Morton's intent and challenges to the factual recitation on
7 the basis that they were proven at a trial that Ms. Morton was
8 not a participant in, there we do have objections. Obviously,
9 Ms. Morton pled guilty and admitted that she intended to commit
10 the fraud, and we would not be here if she had not intended to
11 do so, so the language with respect to intent clearly properly
12 belongs in the PSR.

13 With respect to the suggestion that evidence adduced
14 at trial doesn't belong in the PSR, I think if Ms. Morton has
15 specific challenges to evidence that she wants to raise, she
16 can pursue them, but the mere fact that there's a citation to
17 the fact that it was put forth at trial is no reason that it
18 can't be included simply because she was not a trial defendant.
19 So there, too, we think that the language and the facts are a
20 problem.

21 THE COURT: All right. As an initial matter, what I'm
22 going to do is I'm going to make all the corrections from
23 paragraph 9 to paragraph 142.

24 I'm not going to include the footnotes, Ms. Heller,
25 unless you're asking me to do so. Just clarify that for me,

KbiWmors

1 please.

2 MS. HELLER: Oh, no, your Honor. Those were intended
3 as (indecipherable).

4 THE COURT: And with respect to the updates regarding
5 the additional, the other defendants, the codefendants, I can
6 either leave it to the two of you to submit language. I can
7 leave it to the probation department. I mean there shouldn't
8 be dispute about that. With respect to language, why don't you
9 do that. Why don't you speak among yourselves and just submit
10 a letter to me or just give it directly to the probation
11 department.

12 Ms. Mermelstein, do you have a preference on that?

13 MS. MERMELSTEIN: Your Honor, whatever you prefer. If
14 it's easier for your Honor not to have to (indecipherable),
15 we're happy to work on it with probation. I don't think
16 there'll be any dispute.

17 THE COURT: OK. Why don't you do that.

18 Now, with respect to what was proven at the trial, I
19 think the government is right, and I think it's, of course,
20 clear from the presentence report that Ms. Morton was not at
21 trial. If there is particular evidence that you seek to
22 challenge, Ms. Heller, let me know that specifically. I'll
23 just add if there's additional language you want me to add,
24 like Ms. Morton's now contesting blank, I can add that in. I
25 think the language should stay as is, but I'm also happy to add

KbiWmors

1 in language expressing Ms. Morton's current position if you
2 would like me to do that.

3 MS. HELLER: Right. Your Honor, I think what we would
4 contemplate for both this and the intent language was just
5 simply a sentence, perhaps, to this effect: Ms. Morton was not
6 a defendant at the trial and thus did not have an opportunity
7 to challenge the evidence that was presented. And for intent,
8 similarly, perhaps a sentence that would say Ms. Morton, in her
9 two motions to withdraw her guilty plea, alleged that she did
10 not have intent to commit the charged crimes, just simple
11 factual recitation.

12 THE COURT: OK. I'm going to do that. I'm going to
13 add in language in paragraphs -- I don't know if I'll put it in
14 all of them; there's 60 to 63 -- to the effect that Ms. Morton
15 notes that she was not a defendant at trial, so I'm making it
16 clear that this is something she wants to say here, and did not
17 have the opportunity to challenge the evidence or the witnesses
18 presented. And then I will add --

19 Go ahead.

20 MS. HELLER: I was just saying my video has frozen. I
21 can hear you perfectly. I just wanted to note that, and I
22 don't know whether I should -- maybe we'll all just wait, but I
23 may want to log back on if it continues.

24 THE COURT: That's fine. Do you want to do that right
25 now? Do you want to take a one-minute break and log out and

KbiWmors

1 log back in?

2 MS. HELLER: Yeah. I apologize. Perhaps that's best.
3 I'll do that very quickly and be right back on, but I'm still
4 on audio.

5 THE COURT: OK.

6 MS. HELLER: Because I'm on the audio through
7 conference.

8 THE COURT: OK.

9 MS. HELLER: I think, actually, your Honor's fine if
10 you keep talking.

11 THE COURT: All right. I'll do that.

12 MS. HELLER: I can hear you.

13 THE COURT: That's what I'm going to do. I'm going to
14 just add in one line saying that Ms. Morton, in her motions to
15 withdraw her plea, is now contesting that she had the requisite
16 intent, but I'll also add in that those motions to withdraw her
17 plea were denied. I can't recall if that's -- that's
18 obviously -- I take that back. That wouldn't be in this
19 report.

20 MS. HELLER: That's right.

21 THE COURT: Was the first one in here? Let me look
22 back.

23 I'll look later, but in any event, I will note that
24 she's made two motions to withdraw her plea and that both of
25 those motions have been denied by the Court.

KbiWmors

1 All right.

2 MS. HELLER: I'm now back on video.

3 MS. MERMELSTEIN: (indecipherable) PSR because the
4 first PSR contemplates the loss of acceptance points on the
5 basis of the effort to withdraw.

6 THE COURT: You're absolutely right. You're
7 absolutely right. You're absolutely right.

8 I'll just add in that there were, in fact, two
9 motions. She's now contesting that she had the requisite
10 intent, but I'll note somewhere in there that those two motions
11 have been denied.

12 If you all want to see where I put it before this is
13 released, you have the opportunity to do so, Ms. Heller.

14 Are you also persisting in some of the prior
15 objections, Ms. Heller, that were raised by prior counsel,
16 including that she is, in fact, entitled to acceptance points?

17 MS. HELLER: No, your Honor. We're not persisting in
18 the fact that -- we do not contest that Ms. Morton is entitled
19 to acceptance points, and I believe all of the prior objections
20 have been noted and -- within the third addendum, third
21 disclosure, so although we certainly don't withdraw any of
22 those objections, I don't think any of them need to be
23 addressed.

24 THE COURT: OK. All right.

25 With that said, does the government have any

KbiWmors

1 objections to the presentence report?

2 MS. MERMELSTEIN: No, your Honor.

3 THE COURT: OK.

4 The Court adopts the factual findings in the report
5 with the modifications already noted, most of which were agreed
6 to. The presentence report will be made part of the record in
7 this matter and placed under seal. If an appeal is taken,
8 counsel on appeal may have access to the sealed report without
9 further application to the Court.

10 Ms. Morton, when you pled guilty in May 2018, I'm sure
11 you remember we discussed the federal sentencing guidelines,
12 and they've been raised a number of times in various
13 proceedings since then. I'll just note for the record they are
14 recommendations to the Court. At one point they were
15 mandatory, meaning judges were required to follow them, but
16 they're no longer binding on judges. But judges must
17 nonetheless consider them in determining an appropriate
18 sentence and must ensure that they have properly computed the
19 guidelines range.

20 Based on the presentence report as well as my
21 independent evaluation of the guidelines, I find that
22 Ms. Morton's offense level is 35. Her criminal history
23 category is I and her recommended guidelines sentence is 120
24 months because that's the statutory max, which is now the
25 guidelines range.

KbiWmors

1 Is there any dispute about that?

2 MS. MERMELSTEIN: No, your Honor.

3 MS. HELLER: No, your Honor, there's not.

4 THE COURT: All right. As I said a moment ago, the
5 range is only advisory. Courts may impose a sentence outside
6 of that range based on one of two legal concepts: a departure
7 or a variance. A departure allows for a sentence outside of
8 the advisory range based on some provision in the guidelines
9 themselves. Neither side, as I understand it, is seeking a
10 departure, but I understand that Ms. Morton is seeking a
11 variance.

12 Is that correct, Ms. Heller?

13 MS. HELLER: That's correct, your Honor.

14 THE COURT: All right. With that, I'll hear from the
15 parties. Would the government like to be heard --

16 MS. MERMELSTEIN: Yes.

17 THE COURT: -- or would any victims like to be heard?

18 MS. MERMELSTEIN: Your Honor, no victims intend to be
19 heard.

20 And I'll be brief, your Honor. Your Honor's obviously
21 very familiar at this point with the facts of this case, but
22 the evidence here with respect to Ms. Morton is very clear:
23 That she assumed a fiduciary role with respect to pension fund
24 clients of both Atlantic and Hughes and she completely
25 abdicated that responsibility, having agreed even before the

KbiWmors

1 purchase of those entities, that tens of millions of dollars of
2 worthless bonds would be put into the client accounts and
3 indeed the clients lost the entirety of those investments.

4 She did that not once, but twice. She did it despite
5 protests of some of the employees, longstanding employees, of
6 the investment advisers, and after the first set of bonds was
7 discovered by the clients, they fired the investment adviser.
8 They demanded the bonds be sold, and everyone involved was very
9 aware that the bonds could not be sold because no one wanted
10 them. And nonetheless, Ms. Morton went forward, doing exactly
11 the same thing a second time, with full knowledge of how
12 clients were reacting and the fact that they had no market and
13 could not be resold. And those are pension funds that have
14 lost that money and will not recoup it. There is no
15 expectation here that restitution or forfeiture will ever be
16 paid to these people in full.

17 Ms. Morton has also, uniquely perhaps, wholly failed
18 to accept any responsibility for her conduct here. She has
19 along the way blamed the government, blamed other members of
20 the conspiracy, blamed at times her own lawyers, and will not,
21 continues to fail to acknowledge her role in this offense, and
22 I think that that is a very serious consideration at
23 sentencing.

24 As we've laid out in our sentencing submission, and I
25 won't belabor it, there's no question that COVID is something

KbiWmors

1 that has to be considered here, but the remedy surely cannot be
2 a free pass for Ms. Morton, and given that she is not yet
3 incarcerated, there's really -- your Honor does not face the
4 challenge of a binary choice that we face in the compassionate
5 release setting, in which the choice is simply to let someone
6 out or have them serve the entirety of their sentence and there
7 is no middle ground. There is very much a middle ground here,
8 and the government does not object to a surrender date that's
9 set many months from now, and which can be revisited, but feels
10 very strongly that your Honor should impose the sentence that
11 would be imposed in the absence of COVID and account for COVID
12 simply by delaying surrender.

13 I think a very serious incarcerated sentence is
14 appropriate here to punish the conduct, and as a result, we
15 think the guidelines are not an unreasonable sentence in this
16 case.

17 THE COURT: Let me ask you this. I mean you're asking
18 for a ten-year sentence. Of the people that have already been
19 sentenced, the only person who got more than that is Jason
20 Galanis, and only half of that was run consecutively in the
21 initial sentence. It's since been changed by Judge Castel in
22 light of the reversal in the Gerova case, but only half of that
23 was to run consecutively.

24 Gary Hirst got a 96-month sentence, but only 36
25 months -- three years -- were to run consecutively, and he had

KbiWmors

1 prior criminal dealings with the Galanis brothers.

2 John Galanis got a 120-month sentence, and only four
3 of those years were to run consecutively.

4 Gary Hirst is already on home detention.

5 Why would it not lead to unwarranted sentencing
6 disparities to give Ms. Morton a sentence of 120 months or
7 anything close to that?

8 MS. MERMELSTEIN: Your Honor, I think that's fair. I
9 would say the government has asked for a guidelines sentence
10 for each of these defendants, and in keeping with that, I don't
11 think one would be unreasonable separate and apart from the
12 other sentences received.

13 Putting Ms. Morton in the context of the other
14 defendants, it's complicated with respect to the defendants who
15 are serving two sentences because how you accommodate those two
16 things together is a little bit nuanced. But I would note with
17 respect to how to situate her that at Mr. Cooney's sentencing
18 your Honor asked if he should receive a minor role and whether
19 or not there were any participants in the scheme who were less
20 culpable than him, and the government's view, answer to your
21 Honor was that there were no participants in the scheme less
22 culpable than Mr. Cooney.

23 Mr. Cooney obviously had a serious role in the
24 offense, but he received 30 months. He did not have any
25 fiduciary duty to the people whose money he stole, and as the

KbiWmors

1 government said at his sentencing, there were no defendants it
2 viewed as being less culpable than him. So I take your Honor's
3 point that while guidelines sentences in the government's view
4 were appropriate across the board here, in light of the
5 sentences imposed, 120 months might be disproportionate. I
6 think nonetheless when you situate Ms. Morton you have to see
7 her as being between Mr. Cooney and Mr. Hirst; Mr. Hirst being,
8 of course, the only other defendant in the scheme who was
9 directly employed at and involved in the fiduciary assets of
10 the scheme and who also was (indecipherable) a fiduciary duty,
11 and so I would put her between Mr. Cooney and Mr. Hirst in that
12 respect.

13 THE COURT: I can talk more about how I look at her as
14 different from Mr. Hirst, but with respect to Cooney, I think
15 that there was more evidence that he was aware of this broader
16 fraud. And as you know, when Ms. Morton pled guilty, she
17 acknowledged that her conduct enabled Jason Galanis to steal
18 the bond proceeds through the broader fraud that led her
19 investors to lose money, but she specifically disclaimed any
20 knowledge of that broader fraud, and the government was
21 comfortable with that allocution at the time.

22 All right. In any event, I think I've made my point
23 and I've heard you out, so thank you.

24 MS. MERMELSTEIN: If I could say one thing, your
25 Honor?

KbiWmors

1 THE COURT: Sure. Go ahead.

2 MS. MERMELSTEIN: I do think Ms. Morton's allocution
3 was unquestionably legally sufficient, but that doesn't mean
4 the government agreed with the narrow way in which she pled.

5 THE COURT: I'm fully aware of that fact, and I think
6 you've made your point very clear in your submissions, relying,
7 among other things, on trial testimony. So I think that's
8 clear. I just wanted to note that for the record when we're
9 speaking about relative culpability.

10 Ms. Heller, would you like to be heard?

11 MS. HELLER: I would, your Honor. Thank you very
12 much.

13 And before I begin, I already discussed this with your
14 Honor's deputy, but with the Court's permission, Samantha
15 Lawson, who has filed a notice of appearance and is an
16 associate on the matter, would be speaking just for a minute on
17 one discrete issue in the middle of my presentation?

18 THE COURT: Yes, of course.

19 MS. HELLER: OK.

20 Welcome.

21 MS. LAWSON: Thank you.

22 MS. HELLER: And Ms. Lawson is on video. I can't see
23 her on my screen, but I assume she will pop up.

24 THE COURT: Yes, I can see her.

25 MS. HELLER: OK.

KbiWmors

1 Your Honor, thank you. Thank you for the time today.

2 I want to spend a little bit of time talking about the
3 Michelle Morton that I've come to know over the past two years.
4 Michelle has lived a fascinating life, from being elected
5 president of her junior and senior year classes, one of the few
6 Black girls in her school, to working her way up the financial
7 industry ladder and eventually owning her own firm, Pacific
8 American Securities, to being asked to serve on the board of
9 directors of her alma mater, Hood College, Michelle is a person
10 who cares deeply. She cares deeply about the causes she
11 believes in and for the people she loves.

12 As Ms. Lawson will discuss further, she's a devoted
13 daughter, spending her days and nights caring for her elderly
14 parents and assuring that their needs are taken care of. She
15 believes in the advancement of those less fortunate, especially
16 people of color. At Pacific American she made it a point to
17 employ women of color to help employ them -- to help empower
18 them. Excuse me. Long before she ever met her codefendants in
19 this case, she took an interest in Native-American causes,
20 attending NAFOA conferences. And NAFOA is the Native-American
21 Finance Officers Association. She networked with those engaged
22 in Native-American investment opportunities. She was building
23 her expertise to financially advise Native-American tribes.

24 Michelle is also someone that I've come to know has a
25 firm sense of right and wrong. That's a sense that led her to

KbiWmors

1 stand up to CALSTRS when they asked her to take a financial
2 position that she thought was illegal when she was at Pacific
3 American, and that's described in detail in prior counsel's
4 submission. That's the same sense that led her to call FInRA
5 and later begin working with the FBI and the U.S. Attorney's
6 Office, when she suspected that Jason Galanis and his crew were
7 committing fraud, to engage in conduct that she thought was
8 very personally dangerous, recording phone calls with and
9 meetings with Jason Galanis.

10 Michelle is someone who's suffered greatly also in her
11 life. She was brutally and violently raped in high school, a
12 trauma that led to a pregnancy and a late-term abortion that
13 has scarred her forever. She was never able to conceive a
14 child after that incident. Michelle has also endured the
15 suicide of her ex-husband Tom, a man who she loved deeply but
16 who was troubled beyond her ability to help him. Michelle also
17 suffers greatly from medical conditions that plague her,
18 including most seriously her lupus nephritis, which has led to
19 chronic kidney disease. Her hypertension also poses
20 significant difficulty for her, often leading to dizziness,
21 headaches, incapacitation during spikes, and we've provided
22 hundreds of pages of medical records to document those
23 conditions in addition to a letter from a physician.

24 Beyond all of this, all of these things and these
25 experiences that Michelle has had, I've come to know that she's

KbiWmors

1 smart, funny; she's caring. She's passionate. She's a
2 remarkable person, who's lived an extraordinary life and
3 succeeded in the face of incredible challenges, up until she
4 met Jason Galanis, when it all turned upside down. We submit
5 that Michelle's history and characteristics, which I just
6 recounted and are described at length in prior counsel's
7 submission, as well as the lack of a need for any specific
8 deterrence, which I'll address shortly (indecipherable),
9 particularly in light of the COVID-19 pandemic. But now I
10 would like to address the pandemic and the government's
11 arguments, because the pandemic is necessarily front and center
12 of this proceeding, obviously, as we appear here.

13 THE COURT: And while you do that, Ms. Heller, I'll
14 tell you I am inclined to take the government's suggestion and
15 to put off her surrender date until a time at which the
16 pandemic is under control in the federal facilities, so just
17 keep that in mind when you're making your argument, please.

18 MS. HELLER: That's helpful, your Honor.

19 As we all know, as we're appearing right now, we are
20 in the midst of the worst period of the pandemic so far
21 nationwide, and as your Honor has just said and as the
22 government has also conceded, to surrender right now could
23 effectively be a death sentence for Michelle, a certainly
24 grave, grave danger for her, and so we appreciate that both
25 your Honor and the government don't feel that any surrender

KbiWmors

1 currently would be necessary. But what we submit is what we've
2 previewed in our very brief submission of November 9, that this
3 alternative solution, the postponement of a sentence until some
4 unknown time in the future is also not particularly realistic.

5 We don't know at this point when COVID-19 will have
6 receded to the point that a prison could be a safer place for
7 Michelle. Of course, since we actually made our submissions
8 we've now received promising news of potential vaccines, but
9 it's totally unclear when the general public will begin being
10 able to receive the vaccine. Prison populations are likely to
11 be among the last groups to receive those doses. Prisons will
12 have to make special modifications to store the vaccine, which,
13 as we know, the Pfizer vaccine has to be stored at
14 exceptionally low temperatures and under -- and both vaccines,
15 I believe, under very specific conditions.

16 Perhaps even more critically, the effect of vaccine on
17 lupus patients almost certainly has not yet been studied, so
18 it's unclear whether Michelle will ever be able to take a
19 vaccine. As we sit here today, whether she would be able to do
20 that, I think, is entirely in question. And all of that aside,
21 as we've argued and as prior counsel argued before, prison was
22 an exceptionally dangerous prospect for Michelle even before
23 COVID-19 due to the devastating effect that stress can have on
24 her lupus nephritis and hypertension, among other factors.

25 We saw what happened on the day of the original

KbiWmors

1 sentencing in this case and we've now seen the medical records
2 that document that she went into hypertensive crisis, and I,
3 frankly, shudder to think about what might happen if Michelle
4 is put in the extraordinarily stressful situation of being put
5 in prison on a day-to-day basis and how that would affect her
6 hypertension, her lupus and all of the serious conditions that
7 she ignored, COVID aside. So we recognize that varying
8 downward from 120 months to a noncustodial sentence would be
9 extraordinary, but we respectfully submit these are
10 extraordinary times, as your Honor has noted and many other
11 courts have noted, and that even aside from those extraordinary
12 times, the documented medical conditions require, what we
13 submit, they require that any safe sentence for Michelle would
14 not include incarceration.

15 If your Honor has any questions on that, I'm at peace.
16 I'm happy (indecipherable) further.

17 THE COURT: No. Thank you.

18 MS. HELLER: OK.

19 And now, with the Court's permission, Ms. Lawson will
20 speak for a few moments.

21 MS. LAWSON: Thank you, Ms. Heller.

22 And good morning, your Honor.

23 THE COURT: Good morning.

24 MS. LAWSON: As Ms. Heller has explained, any term of
25 prison would be catastrophic for Michelle even prior to COVID,

KbiWmors

1 but her incarceration would also have a disastrous impact on
2 her 82-year-old mother and her 86-year-old father. Michelle
3 lives with her parents and (indecipherable) herself with their
4 care and well-being.

5 Michelle's mother Beatrice, called Betty, and her
6 father Ronald depend solely on Michelle to run their home,
7 ensure they have food to eat and help them remain healthy. To
8 that end, Michelle cleans the house. She does the family
9 laundry, stocks the kitchen with food and provides meals, pays
10 the household bills and runs errands outside the home for her
11 parents. As Michelle's parents have gotten older, she has
12 stepped in to help them (indecipherable) own medical
13 conditions. She reminds them to take their daily medications
14 and she refills prescriptions when they need it.

15 Michelle goes above and beyond every day to ensure her
16 parents feel supported as they enter (indecipherable) stage of
17 their lives, helping her father shave, something he can't do
18 anymore, and checking on her sleeping parents throughout the
19 night. Michelle's parents are entirely dependent on her for
20 their basic needs and survival. With Michelle by their sides,
21 they lead happy, healthy and stable lives. Without Michelle to
22 care for them, they will struggle to prepare meals, take
23 life-sustaining medication and maintain their hygiene.

24 As we previewed, it was true before COVID and it's
25 even more pronounced now. Due to their ages and health

KbiWmors

1 conditions, Betty and Ronald are at high risk for complications
2 if they contract COVID, so they can't go to the grocery store
3 (indecipherable). They can't do pharmacy runs. They can't do
4 errand runs. They rely on Michelle more than ever now, and the
5 government is simply wrong that Michelle's brother can take
6 care of their parents in her absence.

7 Michelle's younger brother and his wife, who
8 temporarily live with her parents, are planning to move out of
9 the family home in short order; they're already house hunting,
10 and they are on their way to a permanent move. But more
11 pressing is that Michelle's younger brother and his wife have a
12 nearly 13-year-old son with autism, who is completely dependent
13 on them for care. Michelle's nephew is largely nonverbal and
14 does not keep a normal schedule (indecipherable) at 2 a.m.
15 sometimes. He is incontinent and not able to use the toilet,
16 something that must be dealt with day and night by his parents.
17 As he grows, Michelle's nephew has become more physical and at
18 times more aggressive while being cared for. He cannot be left
19 unsupervised for really any amount of time, because in the past
20 he has walked out of the house. He's gone down the street.

21 Michelle's brother and sister-in-law both have work
22 responsibilities as well, and they arrange their schedules so
23 that one of them is always with their son while the other
24 works, and then they switch. They simply cannot provide care
25 for two additional people, let alone the same quality of care,

KbiWmors

1 should Michelle be incarcerated.

2 Finally, Michelle's older brother does not live in New
3 Jersey, and so he is not able to step in either. He travels
4 constantly for work, and his home base of late has been
5 Houston, Texas, and Minnesota. Michelle actually just got word
6 that he will be relocating to Massachusetts shortly. Contrary
7 to the government's assertion, this does, in fact, render him
8 completely unavailable (indecipherable). Put simply, Michelle
9 is critical to her parents' survival and remaining in their
10 home is critical to hers. By not sending Michelle to prison
11 it's not an understatement to say (indecipherable) three
12 people's lives and not just one.

13 MS. HELLER: Your Honor, for purposes of --
14 (indecipherable).

15 THE COURT: I'm sorry. I didn't hear the last
16 comment. The audio went out for a moment.

17 MS. HELLER: Yeah. Was it my comment or Ms. Lawson's
18 comment?

19 THE COURT: No. I think I heard the end of Ms.
20 Lawson. Ms. Heller, I think it was you. Were you saying
21 something about the court reporter?

22 MS. HELLER: Yes. I was just saying it's Ms. Heller
23 now for the court reporter.

24 THE COURT: Oh, OK. All right. Understood.

25 MS. HELLER: Yeah.

KbiWmors

1 THE COURT: Sorry.

2 MS. HELLER: OK.

3 THE COURT: Please (indecipherable).

4 MS. HELLER: Your Honor, I want to finish our
5 presentation by just returning to the 3553(a) factors,
6 specifically focusing on disparity, deterrence, a just
7 punishment and the need to protect the public.

8 In response to the sentencing disparity issue, the
9 Court has already hit the nail on the head with respect to the
10 other defendants, and I don't think I need to further dwell on
11 that other than to say that we certainly don't feel that
12 Michelle ranks anywhere that highly on the culpability scale.
13 But we also want to note, what we emphasized in our submission,
14 is that we view Michelle as simply in a different category than
15 her codefendants.

16 She did not benefit financially from the crimes of
17 conviction, unlike many of her codefendants, who spent the
18 investors' money on their own lavish lifestyles. Michelle, on
19 the other hand, is so destitute she cannot even afford the
20 medical care that she desperately needs. And Jason Galanis
21 used her. Jason Galanis and Hugh Dunkerley viewed her as a
22 scapegoat, someone they could blame for their actions. She was
23 an easy and convenient mark for them because she was not part
24 of their crew.

25 Also, none of her codefendants that we're aware of had

KbiWmors

1 family or medical situations anywhere of a similar severity to
2 hers, and as the Court knows, those issues were going to be
3 significant even at the initial sentencing proceeding. And the
4 stakes are infinitely higher now.

5 Now, as far as the need for just punishment and
6 deterrence, this case has wreaked other destruction on
7 Michelle's life. Her once flourishing career in the financial
8 industry, which she worked her whole life to achieve, is over
9 forever. She knows that. Thus, the Court has no reason to be
10 concerned that she's going to recidivate. Michelle is sick
11 with a variety of medical conditions she cannot pay to treat,
12 as I mentioned. She's lost her friends, her colleagues, her
13 personal and professional support system. Her indictment and
14 conviction, we respectfully submit, are punishment enough. Any
15 member of the general public who were to see what Michelle's
16 life has become would agree that she's suffered greatly already
17 by virtue of her conviction and will continue to suffer for the
18 rest of her life. And neither the government nor the
19 guidelines suggest that a sentence of death or life
20 imprisonment should be imposed here. But that's what a
21 custodial sentence might well be for Michelle, COVID aside.

22 Michelle is a strong woman. I've come to know she's
23 an exceptionally strong woman, someone who I know can survive
24 almost anything, but she might well not survive a term of
25 incarceration in this case. So for that reason and for the

KbiWmors

1 many others argued in our submission, we respectfully submit
2 that a sentence of home confinement would be fair and
3 appropriate in this case.

4 Your Honor, unless you have any questions, that
5 completes our oral presentation.

6 THE COURT: Thank you.

7 Ms. Morton, is there anything you'd like to say today?

8 THE DEFENDANT: No. Your Honor.

9 THE COURT: OK.

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you.

12 Is there any reason why sentence cannot be imposed at
13 this time?

14 MS. MERMELSTEIN: No, your Honor.

15 MS. HELLER: No, your Honor.

16 THE COURT: I'm required to consider the advisory
17 guidelines range of 120 months as well as various other factors
18 that are outlined in a provision of the law that's 18 U.S.C.
19 Section 3553(a), and I've done so.

20 Those factors include, but are not limited to, the
21 nature and circumstances of the offense and the history and
22 characteristics of the defendant, because each defendant must
23 be considered individually as a person. Judges are also
24 required to consider the need for the sentence imposed to
25 reflect the seriousness of the offense, promote respect for the

KbiWmors

1 law, provide just punishment for the offense, afford adequate
2 deterrence to criminal conduct, protect the public from further
3 crimes of the defendant and avoid unwarranted sentencing
4 disparities, among other things.

5 Look, as I've said a number of times previously with
6 respect to this case, there's no real dispute about the
7 seriousness of the crime and the harm that it caused real
8 people, the harm that it caused to one of the poorest
9 Native-American tribes in the country as well as the clients of
10 Hughes and Atlantic, pension funds held for the benefit of
11 transit workers, longshoremen, housing authority workers and
12 city employees, among others.

13 Given her admission at her plea, there's also or
14 should be no dispute that Ms. Morton breached her fiduciary
15 duty to the Hughes Atlantic clients when she agreed to purchase
16 the WLCC bonds into their accounts in violation of investment
17 parameters of those accounts and after failing to disclose
18 material conflicts of interest in the transaction. I'm
19 especially troubled that even after the negative reaction of
20 the Hughes employees and clients following that purchase of
21 WLCC bonds she engaged in the same conduct at Atlantic.
22 Together with Jason Galanis and others, she used another
23 pension-fund client's money to purchase more than \$16 million
24 of another round of WLCC bonds despite the material conflicts
25 and violations of investment policies and agreements. And

KbiWmors

1 Ms. Morton's role was essential to the success of this scheme.

2 All that said, I do view Ms. Morton's role as
3 distinguishable from that of many of her coconspirators, as I
4 alluded to earlier. Critically, from my perspective, there's
5 no direct evidence that she knew that the WLCC had been
6 fraudulently induced to issue the bonds or that the bond
7 proceeds were stolen. Indeed, while she acknowledged during
8 her plea allocution that her conduct enabled Jason Galanis to
9 steal the bond proceeds through a broader fraud that led her
10 investors to lose money, she disclaimed any knowledge of that
11 broader fraud, and in that respect, it makes the guideline that
12 is driven by the loss amount significantly less useful here.

13 Ms. Morton also didn't receive any of the bond
14 proceeds herself, unlike her codefendants, who, other than
15 Archer, received anywhere from thousands to millions of dollars
16 for their involvement in the scheme.

17 Just to be clear, I don't mean in any way to minimize
18 or excuse her conduct. She knew that she was committing
19 investment adviser fraud and played a critical role in the
20 scheme that led her investors to suffer tremendous losses, but
21 her conduct is distinguishable, in my view.

22 I also think she deserves some credit for her attempts
23 to cooperate, including her agreement to wear a wire during two
24 meetings with, and to record numerous telephone calls with,
25 Jason Galanis and for providing information to law enforcement,

KbiWmors

1 including the contents of her cell phone. That credit should
2 be somewhat limited for the reasons noted by the government:
3 that her efforts to raise concerns with FInRA about Jason
4 Galanis appeared to have been part of an effort to save herself
5 after receiving document requests; and that she agreed to
6 assist the FBI and prosecutors only after she was approached by
7 the FBI.

8 That said, most cooperating witnesses only cooperate
9 after their conduct has been uncovered.

10 As for her remorse, or lack thereof, I agree that by
11 attempting to withdraw her guilty plea twice at least made a
12 wonder if she truly were remorseful and willing to accept
13 responsibilities for her actions. At this point I think it's
14 clear she's not willing to accept responsibility for her
15 actions, although she may well be remorseful that people were
16 harmed in the way that they were.

17 I have also considered Ms. Morton's age; her
18 substantial medical issues, both physical and mental; the
19 traumatic events that she's experienced; and that she is a
20 caretaker for her elderly parents; and that, by all accounts,
21 she lived a hardworking and law-abiding life prior to
22 developing a relationship with Jason Galanis.

23 Finally, I've considered the need to avoid unwarranted
24 sentencing disparities, and as I noted earlier, I do think
25 giving her the guidelines sentence the government's requesting

KbiWmors

1 would lead directly to unwarranted sentencing disparities.

2 I've already noted above how I view her and her
3 conduct as distinguishable in certain ways from some of her
4 codefendants. Unlike Ms. Morton, for example, Gary Hirst, who
5 pled guilty to four counts involving securities fraud and
6 investment adviser fraud, had previously engaged in a different
7 fraud with John and Jason Galanis and received \$1.3 million in
8 proceeds for his conduct. And as I noted earlier, while I
9 imposed a sentence of 96 months in Mr. Hirst's case, only 36 of
10 those were imposed consecutive to the sentence that he got in
11 the Gerova fraud, the prior fraud case with John and Jason
12 Galanis, and that he was released to home confinement, I think,
13 approximately a year and a half after the sentence. And those
14 are all, I think, relevant factors for me to consider. Unlike
15 Mr. Hirst, for example, Ms. Morton has no criminal history
16 whatsoever.

17 For all those reasons, I think in the light of the
18 seriousness of the conduct, an incarceratory sentence is
19 necessary here. I think I would be sending the wrong message
20 to the many victims in this case not to impose an incarceratory
21 sentence, but I don't think that it needs to be close to the
22 number that the government's requesting and that the guidelines
23 recommend.

24 Ms. Morton, it's the judgment of this Court that you
25 be committed to the custody of the Bureau of Prisons for a term

KbiWmors

1 of 15 months on Counts One and Four to run concurrent to one
2 another. That term of imprisonment shall also be followed by a
3 term of supervised release of three years on each count, also
4 to run concurrent.

5 In light of all of the various reasons I noted, I do
6 believe this sentence is sufficient but not greater than
7 necessary to comply with the purposes of sentencing set forth
8 in the law. And while it may seem like and is a significant
9 reduction from the sentence that the guidelines recommend, I
10 just want to pause for a minute and have everyone think about
11 what it will mean to Ms. Morton, who's now 60 years old and has
12 never engaged in any prior criminal conduct, to spend over a
13 year of her life incarcerated.

14 What I'm going to do now is describe the conditions of
15 supervised release. We'll talk about restitution and
16 forfeiture.

17 Are there any objections to the terms of supervised
18 release that were recommended by the probation department?

19 MS. HELLER: No, your Honor.

20 THE COURT: All right.

21 Ms. Heller, do you want me to read out loud the
22 standard conditions, or do you waive the public reading, since
23 you reviewed the presentence report with Ms. Morton?

24 MS. HELLER: We waive that reading, and we went over
25 it and we can go over it again.

KbiWmors

1 THE COURT: All right. All of the standard conditions
2 shall apply. In addition, the mandatory conditions shall
3 apply.

4 Ms. Morton, you must not commit another federal, state
5 or local crime.

6 You must not unlawfully possess a controlled
7 substance.

8 You must refrain from any unlawful use of a controlled
9 substance.

10 You must submit to one drug test within 15 days of
11 release from imprisonment and at least two periodic drug tests
12 thereafter.

13 The probation department, I see, actually recommends
14 suspending the drug-testing condition.

15 Is there any objection, actually, upon reflection, to
16 suspending that condition?

17 MS. MERMELSTEIN: No, your Honor.

18 MS. HELLER: No.

19 THE COURT: All right. That will be suspended due to
20 Ms. Morton's low risk of future substance abuse and the
21 recommendation of the probation department.

22 Ms. Morton shall also cooperate in the collection of
23 DNA, as directed by the probation officer.

24 In addition, in light of the nature of the crime here
25 and the financial penalties that will be imposed, I'm going to

KbiWmors

1 adopt the special conditions recommended by the probation
2 department:

3 One, Ms. Morton shall provide the probation officer
4 with access to any requested financial information. She shall
5 not incur new credit card charges or open additional lines of
6 credit without the approval of the probation officer unless she
7 is in compliance with the installment payment schedule.

8 And in light of her mental health history, she shall
9 participate in an outpatient mental health treatment program
10 approved by the probation office. She must continue to take
11 any prescribed medications unless otherwise instructed by the
12 healthcare provider. She must contribute to the cost of
13 services rendered based on her ability to pay and the
14 availability of third-party payment.

15 The Court authorizes the release of available
16 psychological and psychiatric evaluations and reports,
17 including the presentence investigation report, to the
18 healthcare provider.

19 All right. I decline to impose a fine in light of the
20 forfeiture and restitution orders that will follow and in light
21 of Ms. Morton's financial condition.

22 I am imposing the mandatory special assessment of
23 \$200, which shall be paid immediately.

24 Ms. Heller, do you have any objection to the order of
25 restitution that the government sent last night, which had been

KbiWmors

1 sent previously; but the version that we were sent last night,
2 do you have any objection to that?

3 MS. HELLER: No. No objection, your Honor.

4 THE COURT: All right.

5 Consistent with the order of restitution, the
6 defendant shall pay \$43,785,176 in restitution to the victims
7 of the offenses charged in Counts One and Four. Her liability
8 is joint and several with that of the other defendants'. The
9 names, addresses and specific amounts owed to each victim are
10 outlined on the schedule of victims. The victim page will be
11 filed under seal, but that will be on the docket later today.
12 I will sign that.

13 With respect to forfeiture, my understanding is that
14 the government is requesting forfeiture in the amount of the
15 \$9,086,016 representing the funds Ms. Morton received from GMT
16 Duncan to purchase Atlantic and Hughes in addition to the
17 \$305,000 that she received to cover Atlantic expenses after
18 purchasing WLCC bonds into an Atlantic account. Is that
19 correct?

20 MS. MERMELSTEIN: Your Honor, I apologize. I think
21 there's actually an update to that. At the time we filed that
22 number, there was some lack of clarity with respect to
23 *Honeycutt* that I think has since been clarified in *Bergstein*,
24 788 F.App'x 742. I actually think in light of that, because
25 Ms. Morton was the CEO of both Atlantic and Hughes and directed

KbiWmors

1 that the proceeds, that the client funds be used to purchase
2 the bonds, that the entirety of the bond purchase amount is
3 forfeitable from her; that is to say, the same number as
4 restitution.

5 I think it's academic in this case, and the government
6 is happy to stand by the number included in its original
7 submission, but I note that because I actually think, upon
8 reflection, that the amount used to purchase the first
9 investment adviser, which was not itself derived from the
10 fraud, is arguably not a proper way to think about forfeiture
11 here; that the better way to think about it is in terms of the
12 money misappropriated from clients to purchase the bonds
13 without disclosure of the conflicts and with the knowledge that
14 the bonds were problematic.

15 I don't know if Ms. Heller has a view. There was no
16 discussion of forfeiture in the defense submission, but I
17 wanted to make that record because I think the more accurate
18 way to think about the forfeiture is to think about it as the
19 same as restitution.

20 THE COURT: Ms. Heller, do you want to be heard with
21 respect to forfeiture? And I do believe given the numbers that
22 we're talking about that it is academic, but that being said, I
23 want to order the proper amount under the law.

24 MS. HELLER: Your Honor, as Ms. Mermelstein said, this
25 issue wasn't briefed, and so I don't think I can take a

KbiWmors

1 position right now based on what Ms. Mermelstein is saying.

2 However, I do think it's academic, and so I think we'd be fine
3 deferring to whatever decision your Honor chooses to make.

4 THE COURT: OK. All right. Again, I think it's
5 academic too, but I think -- you know what? I think in light
6 of the fact that the lower numbers, the nine-plus million and
7 \$305,000, were what Ms. Morton was notified about prior to this
8 proceeding, I'm inclined to stick with that number. Again -- I
9 see Ms. Mermelstein nodding; it seems like you don't have an
10 objection to that -- again, in light of the restitution figure.
11 So I'm going to order forfeiture in that amount. All right?

12 Ms. Heller, I take it you don't have an objection to
13 that because you were aware of that figure in the past and
14 aren't objecting today. Is that correct?

15 MS. HELLER: That's correct. And just to be clear for
16 our client, what I mean by academic is that it's very clear, I
17 think, to everyone here that Ms. Morton lacks -- completely
18 lacks -- the funds to pay either the restitution or the
19 forfeiture, and so though we understand that these items may be
20 legally required, but it's academic because everyone
21 understands she does not, at least currently, have the ability
22 to pay these sums.

23 THE COURT: All right. In any event, I'm sticking
24 with the lower numbers, and I think there's a very clear basis
25 for them in light of the evidence, among other things, that was

KbiWmors

1 introduced at trial.

2 With respect to the restitution amount, do you have an
3 objection to what was recommended on page 42 of the presentence
4 report with respect to payments?

5 MS. HELLER: Let me just get to page 42, your Honor.

6 THE COURT: Yeah. Go ahead.

7 MS. HELLER: No objection, your Honor.

8 THE COURT: OK. I'm not going to read it out loud
9 given that there's no objection, but I'm going to incorporate
10 that into my judgment.

11 That's the sentence I intend to impose.

12 Does either counsel know of any legal reason why the
13 sentence cannot be imposed as stated?

14 MS. MERMELSTEIN: No, your Honor.

15 MS. HELLER: Your Honor, I just had one question. Is
16 it 15 months or 16, one five or one six? I couldn't quite --

17 THE COURT: One five.

18 MS. HELLER: OK.

19 No, your Honor, I don't know of any legal reason.

20 THE COURT: Ms. Morton, before I read you your
21 appellate rights, I do want to talk about the surrender date.
22 As we noted earlier, I think the government agrees, and I agree
23 as well, that it's appropriate to ensure that the pandemic is
24 under control before you surrender. I'm not going to put off a
25 surrender date forever, but I do want to ensure that you're

KbiWmors

1 safe. What I'm going to do is I'm going to schedule the
2 surrender date for six months from now, for May 18, 2021.

3 Ms. Heller, you're permitted to submit a letter if the
4 pandemic is not under control in federal facilities by May 18,
5 2021; you can request that that surrender date be put off.
6 Again, I don't intend to put that surrender date off forever,
7 but I just want to be clear that that's our date unless I grant
8 an adjournment in advance.

9 The conditions of your release will continue up until
10 the time that you report to begin your sentence, Ms. Morton,
11 and keep in mind that if you fail to report for your sentence,
12 you could be charged with another criminal offense.

13 That's the sentence of this Court.

14 You have a right to appeal your conviction and
15 sentence except to whatever extent you may have validly waived
16 that right as part of your plea agreement. If you do choose to
17 appeal, the notice of appeal must be filed within 14 days of
18 the judgment of conviction. If you're not able to pay for the
19 cost of an appeal, you may apply for leave to appeal *in forma*
20 *pauperis*, which simply means that court costs, such as filing
21 fees, will be waived. If you request, the clerk of court will
22 prepare and file a notice of appeal on your behalf.

23 Is the government moving to dismiss the two open
24 counts?

25 MS. MERMELSTEIN: Yes, your Honor.

KbiWmors

1 THE COURT: All right. They'll be dismissed.

2 Ms. Morton, I say this a lot at sentencing, but I
3 really believe it to be true. I don't think you need to be
4 defined by the worst thing you ever did in your life. I don't
5 think you need to be defined by this conduct, but you have to
6 learn from it, and I think you would be better served accepting
7 what you did, as you did previously, coming to peace with it,
8 coming to peace with what I think is a very reasonable sentence
9 in light of how many people were harmed by this conduct and by
10 your conduct. But you don't need to be defined by it. You do
11 a lot of really good things in your life. You care for your
12 parents. You care for your family. There are so many other
13 ways that you can define yourself. I hope that you're able to
14 move forward from this after your sentence in a positive way,
15 and I wish you luck with that.

16 Are there any other applications at this time?

17 MS. MERMELSTEIN: No, your Honor.

18 MS. HELLER: Your Honor, I'm just picking up the phone
19 because there's a bit of background noise so hopefully you can
20 hear me properly.

21 THE COURT: Yes.

22 MS. HELLER: OK.

23 I'm not sure if this will -- I'm not sure if
24 Ms. Morton will choose to file an appeal, but since we're all
25 together here now, I wanted to raise the potential of bail

KbiWmors

1 pending appeal. Again, I don't know whether the surrender date
2 will actually be May 18 or whether it will be further adjourned
3 and whether -- if Ms. Morton does choose to file an appeal what
4 the status of that appeal would be; perhaps it will be resolved
5 by then. But I would raise it, and your Honor knows the
6 standard, but we certainly don't think Ms. Morton is a flight
7 risk or a danger. We think her appeal both, if she were to
8 file it, would potentially present a substantial question of
9 fact given all the year of briefing, a four-day evidentiary
10 hearing, hundreds of exhibits that were reviewed and that
11 potentially there could be an issue that the Court would want
12 to consider.

13 But that aside, there's another basis if your Honor
14 wanted to consider release under 3145(b) for exceptional
15 circumstances in light of the COVID pandemic. So I don't think
16 we have --

17 THE COURT: Can I stop you there.

18 I'm having trouble seeing what the exceptional
19 circumstances would be if I'm not having her surrender until I
20 think that it's safe for her to serve her time.

21 MS. HELLER: Right. And so that's what I was going to
22 say. We may not have to discuss this issue today, and perhaps,
23 maybe we just simply revisit it depending on whether Ms. Morton
24 appeals and when she is surrendering. Does that make sense?

25 THE COURT: You're free to make that application at

KbiWmors

1 another time. I'll tell you I wouldn't be inclined to grant it
2 for the same reasons that I denied the motion most recently in
3 terms of the merits of the appeal, but I am happy to consider
4 that at another time.

5 MS. HELLER: OK. Your Honor, I think it makes sense
6 to revisit, because again there's a lot of questions. I just
7 wanted to raise it now since we were all here together.

8 THE COURT: That's fine.

9 MS. HELLER: Yeah. No problem. So if it becomes
10 relevant at any point in the future, we'll simply write your
11 Honor a letter addressing the issue further.

12 THE COURT: That's fine. I just would advise you not
13 to do it one or two days before the surrender date, but give it
14 time to be fully briefed beforehand so that I can rule.

15 Ms. Mermelstein, do you want to be heard on that at
16 all?

17 MS. MERMELSTEIN: I don't, your Honor. I think the
18 government would oppose any such motion. Your Honor has
19 already given Ms. Morton such a delayed surrender date that I
20 can't see why there's a need to then have bail pending appeal.

21 I would note that Ms. Morton waived her right to
22 appeal a sentence within or below the guidelines, which she has
23 received, so I don't know that she, in fact -- that's a
24 question for her lawyers, but I don't actually think she can
25 file an appeal, and so I don't think that there is an issue

KbiWmors

1 here, and we can brief it if she wants to file it. But I think
2 given that the surrender date is six months out, she can file
3 an appeal now if she has a basis. It may well be decided by
4 then, but I don't think there are any substantial legal issues.
5 Your Honor's record is very clear here, and so I don't think
6 there's a close call.

7 THE COURT: All right.

8 MS. MERMELSTEIN: But we can take it up if it's filed.

9 THE COURT: OK. I'm not going to rule on that now.

10 I'm just going to say to the extent that you intend to make
11 such a motion, just give us time. Don't do it the night or day
12 before the surrender date.

13 But with that said, without any further applications,
14 I think we're adjourned.

15 Stay safe, everyone. Thank you.

16 MS. MERMELSTEIN: Thank you, your Honor.

17 MS. HELLER: Thank you.

18 THE DEFENDANT: Thank you.

19 (Adjourned)